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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/624,808 | 07/22/2003 | David Alan Bailey | ROC920030220US1 | 6643 |
| 46296 7590 10/03/2007 MARTIN & ASSOCIATES, LLC P.O. BOX 548 CARTHAGE, MO 64836-0548 | | | EXAMINER WALTER, CRAIG E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2188 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 10/03/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/624,808

Applicant(s)

BAILEY ET AL.

Examiner

Craig E. Walter

Art Unit

2188

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 4, 5, 9, 10, 16, 19 and 22-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


HYUNG SONG
SUPERVISORY PATENT EXAMINER

10/01/07


Craig E. Walter
Examiner Art Unit 2188

Continuation of 3. NOTE: Claims 23 and 24 were amended after final rejection, hence they require further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's contends, "[n]owhere in the rejection did the examiner address claim 22, therefore the examiner has failed to establish a prima facie case of obviousness for claim 22 under 35 U.S.C. § 103(a)". This argument however is not persuasive. Upon very brief inspection of the previous Office action, present Examiner immediately identified the typographic error committed by previous Examiner on page 6, line 1 (i.e. claim 22 was accidentally labeled 24 by Examiner through minor typographical error). Present Examiner notes this typographical error could have been easily resolved based on the following findings:

Presently recited, Claim 22 is an apparatus claim, whereas claim 24 is drafted to recite a program product. The rejection of "claim 24" asserted by Examiner starting on page 6 of the previous Office correspondence clearly maps the cited art to an apparatus claim.

Claim 24 is rejected twice in the previous rejection (once labeled "claim 24" on page 6, line 1; and a second time as claim 24 on line 9, page 9 of the previous Office correspondence). The detailed rejection set forth by Examiner for the first and second discussions of "claim 24" are very different, hence suggesting that each of these rejections require more attention to resolve this discrepancy. As such, it appears that Applicant declined to read the very thorough analysis provided by previous Examiner of "claim 24" on page 6, which clearly maps the cited art to each limitation of claim 22, not claim 24.

Examiner asserts on page 9 of the previous correspondence that claim 23 is rejected based on the same rationale as claim 22. Realizing that the rejection of claim 23 (which is asserted to be rejected based on claim 22) is asserted between two rejections of claim 24, and that the rejection of claim 22 appears to absent, would suggest that claim 22 was mislabeled on page 6. Based on these factors, common sense would suggest that it is reasonable to assume that claim 22 was actually mislabeled as claim 24 based on a minor typographical error committed by previous Examiner.

Applicant is invited to contact Examiner with any other questions, including common sense decisions with respect to minor typographical errors, or more substantial questions as to the merits of the rejections.

Applicant's argument with respect to the patentability of claim 23 is not persuasive based on the same rationale as discussed supra.

Applicant additionally asserts (with respect to claims 4, 5, 9, 10, 16 and 19), that previous Examiner misconstrued the claim construction, which allegedly recites a partition that owns an I/O resource, and another that does not own that same I/O resource. This argument however is not persuasive. Assuming arguendo, Applicant's interpretation of these claims is in fact accurate. The combination of Day, Tarui and Kaneko's disclosures meet this very limitation as per previous Examiner's asserted rejection (Day teaches two logical partitions, one which owns an identified I/O, and one that does not - see page 4, lines 6-22 of the previous Office correspondence).